

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2012-3

NICOLE RAE KAPLAN
29705 Kimberly Drive
Agoura Hills, CA 91301

**Certified Public Accountant Certificate No.
70888**

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 3, 2013.

It is so ORDERED February 1, 2013.

Loren J. LaManna
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
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Attorneys for Complainant
7

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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11 In the Matter of the Accusation Against:

Case No. AC-2012-3

12 **NICOLE RAE KAPLAN**
29705 Kimberly Drive
13 Agoura Hills, CA 91301

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Certified Public Accountant Certificate**
15 **No. 70888**

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
21 Accountancy. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Terrence M. Mason,
23 Deputy Attorney General.

24 2. Nicole Rae Kaplan (Respondent) is represented in this proceeding by attorney James
25 T. Duff, whose address is One Wilshire Blvd., Suite 2210, Los Angeles, CA 90017-3383.

26 3. On or about May 10, 1996, the California Board of Accountancy (CBA) issued
27 Certified Public Accountant Certificate Number 70888 to Nicole Rae Kaplan (Respondent).
28 Effective March 1, 2010, the Certified Public Accountant Certificate was cancelled pursuant to

1 California Business and Professions Code section 5070.7 for failure to renew the certificate
2 within five years. The Board has jurisdiction to adjudicate this case per Business & Professions
3 Code section 5109.

4 JURISDICTION

5 4. Accusation No. AC-2012-3 was filed before the California Board of Accountancy
6 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
7 Accusation and all other statutorily required documents were properly served on Respondent on
8 April 6, 2012. Respondent timely filed her Notice of Defense contesting the Accusation. A copy
9 of Accusation No. AC-2012-3 is attached as Exhibit A and incorporated by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. AC-2012-3. Respondent also has carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
14 Order.

15 6. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. AC-2012-3, agrees that cause exists for discipline and hereby surrenders her Certified Public
27 Accountant Certificate No. 70888 for the CBA's formal acceptance.

28

1 9. Respondent understands that by signing this stipulation she enables the CBA to issue
2 an order accepting the surrender of her Certified Public Accountant Certificate without further
3 process.

4 RESERVATION

5 10. The admissions made by Respondent herein are only for the purposes of this
6 proceeding, or any other proceedings in which the California Board of Accountancy or other
7 professional licensing agency is involved, and shall not be admissible in any other criminal or
8 civil proceeding.

9 CONTINGENCY

10 11. This stipulation shall be subject to approval by the California Board of Accountancy.
11 Respondent understands and agrees that counsel for Complainant and the staff of the California
12 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
13 surrender, without notice to or participation by Respondent or her counsel. By signing the
14 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
15 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to
16 adopt this stipulation as its Decision and Order, the Stipulated Surrender of License and Order
17 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
18 between the parties, and the CBA shall not be disqualified from further action by having
19 considered this matter.

20 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of
21 License and Order, including facsimile signatures thereto, shall have the same force and effect as
22 the originals.

23 13. This Stipulated Surrender of License and Order is intended by the parties to be an
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
26 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
27 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
28 executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 70888, issued to Respondent Nicole Rae Kaplan, is surrendered and accepted by the California Board of Accountancy.

1. The surrender of Respondent's Certified Public Accountant Certificate and the acceptance of the surrendered license by the CBA shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the California Board of Accountancy.

2. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the CBA's Decision and Order.

3. Respondent shall cause to be delivered to the CBA her wall certificate, if one was issued, on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the CBA shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. AC-2012-3 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$4,212.50 prior to issuance of any new or reinstated license.

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1 ACCEPTANCE

2 I have carefully read the above Stipulated Surrender of License and Order and have fully
3 discussed it with my attorney, James T. Duff. I understand the stipulation and the effect it will
4 have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of
5 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the California Board of Accountancy.

7
8 Dated:

Oct 17, 2012


NICOLE RAE KAPLAN
Respondent

10 I have read and fully discussed with Respondent Nicole Rae Kaplan the terms and
11 conditions and other matters contained in this Stipulated Surrender of License and Order. I
12 approve its form and content.

13 Dated:

Oct. 23, 2012


JAMES T. DUFF
Attorney for Respondent

16 ENDORSEMENT

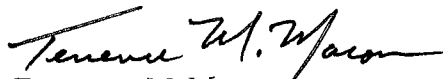
17 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
18 for consideration by the California Board of Accountancy of the Department of Consumer
19 Affairs.

20 Dated:

November 3, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


TERRENCE M. MASON
Deputy Attorney General
Attorneys for Complainant

27 LA2011601228

28 (rev3,10/4/12)

Exhibit A

Accusation No. AC-2012-3

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
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12 In the Matter of the Accusation Against:

13 **NICOLE RAE KAPLAN**
29705 Kimberly Drive
14 Agoura Hills, CA 91301

15 **Certified Public Accountant**
16 **Certificate No. 70888**

17 Respondent.

Case No. AC-2012-3

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

23 2. On or about May 10, 1996, the California Board of Accountancy (CBA) issued
24 Certified Public Accountant Certificate Number 70888 to Nicole Rae Kaplan (Respondent).
25 Effective March 1, 2010, the Certified Public Accountant Certificate was cancelled pursuant to
26 California Business and Professions Code section 5070.7 for failure to renew the certificate
27 within five years.
28

JURISDICTION

3. This Accusation is brought before the CBA under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5063 of the Code provides in pertinent part:

“(b) A licensee shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2003, within 30 days of the date the licensee has knowledge of the events:

....

“(3) Any notice of the opening or initiation of a formal investigation of the licensee by the Securities and Exchange Commission or its designee.

“(4) Any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission.”

5. Section 5100 of the Code provides in pertinent part:

“After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

....

“(h) Suspension or revocation of the right to practice before any governmental body or agency.

....

“(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.”

6. Section 5107, subsection (a), of the Code provides:

“The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.”

7. Section 5109 of the Code provides:

“The expiration, cancellation, forfeiture, or suspension of a license, practice, privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.”

8. Section 5116 of the Code provides in pertinent part:

“(a) The board, after appropriate notice and an opportunity for hearing, may order any licensee. . . to pay an administrative penalty as provided in this article as part of any disciplinary proceeding or other proceeding provided for in this chapter.

“(d) Administrative penalties assessed under this article shall be in addition to any other penalties or sanctions imposed on the licensee. . . including, but not limited to, license revocation [or] license suspension. . . “

9. Section 5116.1 of the Code provides in pertinent part:

“In accordance with Section 5116 and applicable regulations. . . any licensee who violates any provision of this chapter may be assessed an administrative penalty of not more than five thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for each subsequent violation.”

FACTS

10. On or about June 6, 2011, the CBA received a letter dated May 31, 2011, from certified public accountant Yatin D. Mody notifying the CBA of Mody's suspension from appearing or practicing before the Securities and Exchange Commission (SEC) as an accountant. Further research by the CBA indicated that a final judgment as to Mody and Respondent Nicole Rae Kaplan in *SEC v. Vitesse Semiconductor Corporation, Louis R. Tomasetta, Eugene F. Hovanec, Yatin D. Mody, and Nicole R. Kaplan*, Case No. 10 CIV 9239, was rendered on or about March 22, 2011, in the United States District Court, Southern District of New York.

11. The SEC's complaint in Case No. 10 CIV 9239 ("complaint") alleged that Respondent began work at Vitesse Semiconductor Corporation ("Vitesse" or "the Company") in 1998 as Manager of Finance and in 2004, she became the Company's Director of Finance. She officially resigned from Vitesse on April 14, 2006.

1 12. During the period in or about 1995 through April 2006, the complaint alleges Vitesse
2 engaged in fraudulent revenue recognition practices and stock options backdating misconduct.
3 This fraud was orchestrated by certain of Vitesse's most senior former executives. The
4 complaint further alleged that the fraudulent revenue practices resulted in the company filing with
5 the SEC materially false and misleading financial statements in annual reports on Form 10-K and
6 quarterly reports on forms 10-Q from at least late 2001 through early 2006. The complaint also
7 alleges that from 2001 to 2005, Respondent participated in prematurely and improperly recording
8 revenues on product shipments to Vitesse's distributors and customers, failed to timely provide
9 and properly record customer credits from the return of unwanted product, and directed the
10 misapplication of cash to account receivable balances in order to obscure the true age of the
11 receivables.

12 13. As a result, the complaint alleges that Respondent engaged in fraudulent accounting
13 practices that materially misstated the company's annual and quarterly financial statements,
14 which she reviewed or participated in preparing; knowingly circumvented or failed to implement
15 Vitesse's system of internal accounting controls and falsified Vitesse's books, records or
16 accounts; and made material misrepresentations to Vitesse's independent auditor.

17 14. The final judgment entered against Respondent on March 22, 2011 in the civil action
18 entitled *SEC v. Vitesse Semiconductor Corporation, Louis R. Tomasetta, Eugene F. Hovanec,*
19 *Yatin D. Mody, and Nicole R. Kaplan*, Case No. 10 CIV 9239, permanently enjoined her from
20 future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(b)(5) of
21 the Exchange Act and Exchange Act Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from
22 aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange
23 Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13. The final judgment also ordered
24 Respondent to pay \$31,050 in disgorgement of ill gotten gains, and prejudgment interest of
25 \$16,445 and further provided that upon motion of the SEC, the court will determine whether or
26 not a civil penalty is appropriate and the amount of any such penalty. Respondent consented to
27 the entry of the judgment without admitting or denying any of the allegations in the complaint.
28

15. As a result of the civil action entitled *SEC v. Vitesse Semiconductor Corporation, Louis R. Tomasetta, Eugene F. Hovanec, Yatin D. Mody, and Nicole R. Kaplan*, Case No. 10 CIV 9239, on or about April 8, 2011, the SEC instituted administrative proceedings to prohibit Respondent from continuing practice as an accountant before the SEC in a case entitled "*In the Matter of Nicole Rae Kaplan, CPA, Respondent*," Securities and Exchange Commission Release No. 64271/ Administrative Proceeding File No. 3-14331. The Order set forth in Securities and Exchange Commission Release No. 64271/ Administrative Proceeding File No. 3-14331 permanently suspends Respondent from appearing or practicing before the SEC as an accountant.

FIRST CAUSE FOR DISCIPLINE

(Discipline by SEC)

16. Respondent is subject to disciplinary action under section 5100, subsection (l), of the Code in that on or about March 22, 2011, final judgment was entered against Respondent by the SEC enjoining her from further SEC violations, ordering her to pay \$31,050 in disgorgement of ill gotten gains and prejudgment interest of \$16,445, and further provided that upon motion of the SEC, the court will determine whether or not a civil penalty is appropriate and the amount of any such penalty. Additionally, on or about April 8, 2011, in a case entitled "*In the Matter of Nicole Rae Kaplan, CPA, Respondent*," Securities and Exchange Commission Release No. 64271/ Administrative Proceeding File No. 3-14331, the SEC permanently suspended Respondent from appearing or practicing before the SEC as an accountant. The circumstances leading to Respondent's suspension are set forth in paragraphs 10 through 15 above.

SECOND CAUSE FOR DISCIPLINE

(Discipline by Governmental Agency)

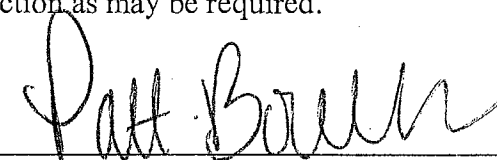
17. Respondent is subject to disciplinary action under section 5100, subsection (h), of the Code in that on or about April 8, 2011, a governmental body or agency (SEC) suspended Respondent's right to practice before that governmental body or agency following a judgment against Respondent by that governmental agency on or about March 22, 2011. The circumstances are described in paragraphs 10 through 15 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 70888 issued to Nicole Rae Kaplan;
2. Awarding the California Board of Accountancy the reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
3. Ordering Nicole Rae Kaplan to pay the California Board of Accountancy an administrative penalty pursuant to Business and Professions Code sections 5116 and 5116.1; and
4. Taking such other and further action as may be required.

Dated: 4/2/12



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

RevAcc3/20